Laborers' International Union of North America, Local Union No. 423, AFL–CIO (Dugan & Meyers Interest, Inc., et al.) *and* Michael A. Mayle

Laborers' International Union of North America, Local Union No. 423, AFL–CIO (Rudolph/Libbe, Inc.) *and* James E. Matheny. Cases 9–CB–7741, 9–CB–7846, 9–CB–7868, 9–CB–7905, and 9–CB–7954

August 31, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS OVIATT AND RAUDABAUGH

On March 13, 1992, Administrative Law Judge Wallace H. Nations issued the attached decision. The Respondent filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings,[1] and conclusions and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Laborers' International Union of North America, Local No. 423, its officers, agents, and representatives, shall take the action set forth in the Order, except that the attached notice is substituted for that of the administrative law judge.

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

There are no exceptions to the judge's dismissal of any complaint allegations.

APPENDIX

NOTICE TO MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to comply with an employee's request to view our job referral records.

WE WILL NOT threaten an employee with a lawsuit for signing an unfair labor practice charge filed against us.

WE WILL NOT, in the operation of our hiring hall, make referrals for employment that deviate from and violate our established and posted referral rules and procedures.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL operate our hiring hall in the manner described in the established and posted rules and in accordance with objective criteria.

WE WILL make whole Michael Mayle and James E. Matheny for any losses they may have suffered by virtue of our unlawful deviation from and violation of our established and posted referral rules, with interest.

WE WILL establish a written attendance procedure for our hiring hall which will record the date and hour of the physical presence of job applicants, and record the names of those applicants who refuse employment on a given date.

WE WILL post notices to our members and applicants that we rely on their application forms in making referrals and WE WILL establish a procedure whereby applicants can regularly update their application forms.

LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL UNION NO. 423, AFL–CIO

Damon W. Harrison Jr., Esq., for the General Counsel.
Lawrence M. Oberdank, Esq., of Columbus, Ohio, for the Respondent.

DECISION

STATEMENT OF THE CASE

WALLACE H. NATIONS, Administrative Law Judge. Between October 15, 1990, and August 8, 1991, Michael A. Mayle (Mayle) filed charges and amended charges in Cases 9–CB–7741, 9–CB–7846, 9–CB–7905, and 9–CB–7954, alleging that Laborers' International Union of North America, Local Union No. 423, AFL–CIO (Union or Respondent) committed certain unfair labor practices. On February 13, 1991, James E. Matheny filed a charge alleging that the Union had committed unfair labor practices. Based on these charges and amended charges, the Regional Director for Region 9 issued a series of complaints, culminating in an order consolidating cases, fourth consolidated complaint and notice of hearing dated August 22, 1991. The consolidated complaint, alleges that Respondent Union has engaged in activity in violation of Section 8(b)(1)(A) and (2) of the National Labor Relations Act (the Act). Respondent filed timely answers to the complaints in which it admits, together with admissions made at the hearing, the jurisdictional allegations of the consolidated complaint, the supervisory or agency status of certain union officials, the fact that it operates an exclusive hiring hall for referral of individuals for employment,

that the hiring hall is open from 6 until 10 a.m., Monday through Friday, and referrals are made by 10 a.m., at which time the hall is closed.

Hearing was held in these cases in Columbus, Ohio, on November 14 and 15, and December 2, 1991. Briefs were received from the parties on or about February 3, 1992. Based on the entire record, including my observation of the demeanor of the witnesses, and after consideration of the briefs, I make the following

FINDINGS OF FACT

I. JURISDICTION

It was admitted by the Respondent and the following named employers, that at all times material:

(a) Dugan & Meyers Interest, Inc. (Dugan), a corporation, has been engaged as a contractor in the building and construction industry out of its Cincinnati, Ohio facility.

(b) Field and Associates, Inc. (Field), a corporation, has been engaged as a contractor in the roofing, sheet metal siding, HVAC, and interior systems business out of its Springfield, Ohio facility.

(c) G.F.C. Inc. (G.F.C.), a corporation, has been engaged as a contractor in the building and construction industry out of its Sylvania, Ohio facility.

(d) The Sherman R. Smoot Company (Smoot), a corporation, has been engaged as a contractor in the building and construction industry out of its Columbus, Ohio facility.

(e) Sasco Brick Contractors, Inc. (Sasco), a corporation, has been engaged as a contractor in the building and construction industry, including a job at Marysville, Ohio.

(f) Teco Glass, Inc.[1] (Teco Glass), a corporation, has been engaged as a contractor in the building and construction industry out of its Toledo, Ohio facility.

(g) Cleveland Cement Contractors, Inc. (Cleveland Cement), a corporation, has been engaged as a contractor in the building and construction industry.

(h) Ro-Dan Mechanical Services, Inc. (Ro-Dan), a corporation, has been engaged as a contractor in the building and construction industry out of its Columbus, Ohio facility.

(i) Rudolph/Libbe, Inc. (Rudolph), a corporation, has been engaged as a contractor in the building and construction industry out of its Columbus, Ohio facility.

It was further admitted and I find that each of the abovenamed employers is employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE INVOLVED LABOR ORGANIZATION

It was admitted and I find that the Respondent Union is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Issues Presented for Determination*

The consolidated complaint raises the following issues for decision:

l. Whether Respondent violated Section 8(b)(1)(A) of the Act on or about October 2, 1990, by Vice President and Business Agent Walter Boffman threatening that an employee would not be referred to future employment because he questioned Respondent's operation of its hiring hall and referral procedures.

2. Whether Respondent violated Section 8(b)(1)(A) of the Act on or about July 11, 1991, by Business Agent Howard Woods refusing an employee's request to view Respondent's job referral records.

3. Whether Respondent violated Section 8(b)(1)(A) of the Act on or about July 15, 1991, by Business Manager Fred Boffman threatening an employee with a lawsuit for signing the charge filed against Respondent in Case 9–CB–7954.

4. Whether Respondent violated Section 8(b)(1)(A) and (2) of the Act by violating its hiring hall rules on or about August 16, 1990, by making referrals to Rudolph to the detriment of Matheny and other employee applicants who were ahead of those referred on Respondent's out-of-work list.

5. Whether Respondent violated Section 8(b)(1)(A) and (2) of the Act by violating its hiring hall rules on or about December 11, 1990, by making referrals to Field after 10:30 a.m. to the detriment of employee applicants who had departed Respondent's hall after it closed at 10:30 a.m.

6. Whether Respondent violated Section 8(b)(1)(A) and (2) of the Act on or about January 28, February 14, May 6 and 22, and June 3 and 26, 1991, and at other dates, by making referrals to G.F.C., Smoot, Sasco, Teco Glass, Cleveland Cement, Ro-Dan, Rudolph, and other employers to the detriment of Mayle and other employee applicants who were ahead of those referred on Respondent's out-of-work list.

B. *Background Facts About the Operation of the Hiring Hall*

Much of the evidence about the hiring hall procedures and operation is uncontested and thus, I will rely on the General Counsel's recitation of this evidence as fact. Respondent operates a hiring hall pursuant to provisions of the collective-bargaining agreement it has with the Central Ohio Division, Ohio Building Chapter, Associated General Contractors of America, Inc. This agreement requires Respondent to be the exclusive source of referrals of employees to employment and Respondent is required to maintain a facility at which it establishes and maintains employment lists for use by applicants for employment in its geographic area pursuant to certain terms and conditions contained in that agreement. Respondent also has a contract with the Ohio Contractors Association known as the Heavy Highway Agreement and in making referrals to employers signatory to or bound by either contract, Respondent utilizes the same referral procedure. The Board in *Laborers Local 423 (Great Lakes Construction)*, 298 NLRB 498 (1990), found that the rules and procedures under which the hiring hall is operated were lawful and did not violate Section 8(b)(1)(A) of the Act. Since the issuance of the decision in that case, the Respondent has modified the hiring hall procedures in limited respects. Specifically, the hiring hall is now open from 6 through 10 a.m., Monday through Friday, at which time the hall is closed and referral applicants are required to leave the hall. Previously, the hall remained open until 1 p.m. Otherwise, the operation of the hiring hall apparently remains as found in the Board's decision referred to above.

As noted in the Board's earlier decision, an individual must initially appear in person at the union hall in order to

[1] The spelling of the name of this company varies throughout the record. The spelling shown here will be used in this decision.

have his name placed on the hiring hall list. For some period of time predating the Board's earlier decision, individuals have been required to complete an application which indicates, among other things, the applicant's skills, experience and past work record, particularly in the laborers' construction industry field. However, employees who have utilized the hiring hall for many years have not completed such applications. On initially signing up for referral, the applicant's name is placed on the out-of-work or referral list by a union agent or employee and the applicant is advised of his number or position on the list. The referral list does not include the telephone number of the applicant or any indication of the skills, abilities, experience, or qualifications of the applicant. Respondent does not, in the regular course of business, obtain or maintain telephone numbers of individuals utilizing the services of the hiring hall.

On subsequent Mondays, applicants for referral are required to either telephone or appear in person at the union hall in order to be checked off to remain current on the referral list. On Mondays which are holidays, an automatic check-off is given to everyone on the list for the week.

In order to fill job requests from employers, Respondent's agents are supposed to call out the names from the out-of work list, beginning with the first person on the A list each morning when jobs are available and continuing down that list until the job is filled.[2] Applicants are required to be present at the hall in order to be referred to employment. If an applicant is not present at the hall at the time his name is called out, he loses his position on the referral list. Although under the established procedures in effect at the time of the prior Board hearing, an applicant did not lose his position on the list if he turned down a job while present at the hall, under current procedures if an applicant is present at the hall and turns down a regular job which is scheduled to last for more than 7 days, he loses his position on the list and his name is placed at the end of the list. If an applicant turns down or refuses a job which is scheduled to last less than 7 days, he does not lose his position on the list. If individuals are referred to employment which lasts more than 7 days, then their name is removed from the out-of-work list and they must later reregister if they desire referral. If employment to which they are referred, in fact, lasts less than 7 days, then the individual is permitted to retain the same position on the out-of-work list which he had prior to the referral to employment. Although the written rules contained in the collective-bargaining agreement provide that employment of more than 3 days would result in removal from the out-of-work or referral list, in actual practice this is applied to jobs of more than 7 days and not 3 days in duration.

Individuals may be recalled by an employer if they have worked for that employer in the past year. Employers may contact individuals directly without going through the union hall and, on occasion, may contact the union hall in order to locate the individual if that person is present.

The rules for the operation of the referral hall are contained in the collective-bargaining agreement with the Associated General Contractors of America, Inc., referred to above, at article 2 and in signs posted on the walls and on the bulletin board at the union hall. Otherwise, there are no written rules with regard to the operation of the hiring hall. There are several signs posted at the union hall which relate to the operation of the hiring hall. One provides, among other things, that the hiring hall hours are from 6 through 10 a.m. Monday through Friday and that the hiring hall will close promptly at 10 a.m. daily. Another such sign which has been regularly posted notifies that not checking off on roll-call days will automatically result in the dropping of the name from the out-of-work list. Another sign on a white piece of paper approximately 11 inches by 14 inches provides, ''Notice, all persons refusing regular jobs will be put to the back of the out-of-work roster. Business Manager'' and has been posted for only a few weeks prior to this hearing on November 14, 1991. In addition, there is a sign which indicates that effective July 15, 1991, no applications will be taken until further notice. This sign has been posted since the date mentioned therein.

Respondent does not keep daily attendance of people present who show up for referral at the hiring hall. Normally, quite a few people show up for referral. Attendance varies from as few as 10 or 15 people to as many as 70 present seeking referral. On any given day there are people who have been at the hall who are not referred out to employment.

Respondent does not keep any complete or systematic record of referrals to employment which have been made. Customarily, individuals referred to employment are given work orders; however, work orders are not given for every job. In addition, Respondent maintains cards for each referral hall applicant or user on which notations are made of job referrals. There are referrals, however, which do not show up on the cards. In addition, notations are made sometimes on the out-of-work or referral list of jobs or employers to which individuals are referred. As with all of Respondent's record keeping as to the operation of the hiring hall, this is not consistently done and thus, there are jobs for which referrals were made and for which there are no records indicating such referrals.

C. *Did Respondent Threaten Mayle Because He Questioned the Operation of the Hiring Hall*

Charging Party Michael Mayle is a member of the Respondent Local Union, and most recently has been a member since 1987.[3] He is the organizer of a dissident group of members which is attempting to unseat the current power structure of the Local, headed by Business Manager Fred Boffman and his brother, Vice President and Business Agent Walter Boffman.[4] On August 16, 1990, Mayle was referred by the hall to a job at Ross Laboratories on Seltzer Road in Columbus, Ohio. This job lasted until Thanksgiving of that year. On October 2, 1990, Mayle was working on this jobsite when he was approached by Walter Boffman. Fellow union member Earnest Walton was also present. According to

[2] Respondent's business agent, Howard Woods, normally calls the names on the referral list, though Business Manager Fred Boffman, and perhaps other union officials, have called the list on occasion. I believe the record is clear that when jobs are available, Woods does normally and routinely call the list beginning at about 7 a.m.

[3] He has previously been a member in the early 1970s, but moved away from the area for a number of years.

[4] Charging Party Matheny is also a member of this group, which has about 12 members. The Respondent local has about 1700 members.

Mayle, Boffman initiated a conversation, stating that he understood Mayle was dissatisfied with the way the hall was run. Mayle said he was and Boffman asked why. Mayle said it was because of the way some of the older members were being treated and because some of the younger members could not get jobs. Boffman told him that was none of his business and Mayle disagreed. Boffman then told him to mind his own business and showed Mayle a list of jobs to which he had been referred, telling him that he had not done so badly since he came back to the Union.

Mayle responded that many of the jobs were only 2 or 3 days in duration. According to Mayle, Boffman then said, ''Well, you don't know what you're doing and you better watch your ass. You better keep that window bucket with you cause you won't be working anymore.''[5] Mayle said to Boffman, ''you people keep all your family and friends working all the time.'' Boffman said he did not know about that. Mayle then said that there was a man working down in Circleville who didn't even know where the union hall was located. Boffman said that the man may have called in on the phone, to which Mayle responded that an application could not be filled out over the phone. Boffman then said that job was not in his district and he did not know anything about it.

Boffman then accused Mayle of talking to union hall employee Eddie Cobb, warning Mayle that if caught Cobb talking to him that he would fire both him.[6] According to Mayle, Boffman then said he would take Mayle's union book away from him and he had better watch his ass, adding that Mayle did not know anything about unions. Mayle responded that he had worked in larger and better unions. Boffman then said he had beat some other members and he would beat Mayle too. Mayle started to say something to Earnest Walton, but Boffman cut him off telling him that he could not speak to Walton.

Earnest Walton testified about this conversation. He testified that Boffman asked Mayle about what he wanted to do with the Union. Shortly thereafter, both Mayle and Boffman became angry. Boffman asked Mayle why he wanted the janitor to get him union bills, mailing lists, and other records. Boffman asked why Mayle did not ask Fred Boffman for this information. According to Walton, Mayle began hollering that he did not like the way Boffman was treating the members. He denied hearing Boffman threaten Mayle.

Walter Boffman testified that he went to see Mayle at the jobsite because Cobb had complained that Mayle was calling him and attempting to get him to take union records from the hall. Boffman said he went to the jobsite and told Mayle that if he wanted records, he should see Fred Boffman or Respondent's secretary/treasurer, George Churchill. He pointed out that telephone numbers and addresses of members were not given out and must stay in the office unless their release had been authorized by the membership. He asked Mayle why he was trying to have Cobb get the records, to which Mayle responded that he did not like the way the Union was being run. Boffman said that if he had a problem he should bring it up in a union meeting or talk about it with Fred Boffman. Mayle then said that he did not like Boffman and Boffman responded that he should not ask union employees to steal records. Boffman told him not to do that. Boffman denied threatening Mayle.

Ed Cobb, who is also an elected auditor in the Union, testified that for about a month during the time Mayle was working at the Ross Laboratories job, Mayle would call him to discuss the Union and express his dissatisfaction with the way it was being run. Mayle would also encourage Cobb to join his dissident group. According to Cobb, Mayle asked him to make copies of records of union expenditures and a membership mailing list and bring them to him. Cobb reported this request to Fred and Walter Boffman.

I do not credit Mayle's assertion that he was threatened with loss of work by Walter Boffman. It is not supported by the testimony of Earnest Walton, who Mayle characterized as a friend of some 20 years. It is not supported by the facts, as he was referred to jobs subsequent to the alleged threat. Mayle is also not in the position of an ordinary member in making allegations of discrimination. He is at the head of a small group of members seeking to oust Fred Boffman and Walter Boffman from their leadership positions and thus is seeking to embarrass the Boffmans. I do credit the testimony of Walter Boffman and Walton that Boffman did not threaten Mayle with loss of work. I credit Boffman's testimony that he went to see Mayle because he believed that Mayle was attempting to have Cobb copy and take from the union office union records and mailing lists, contrary to hall rules.[7] I do not find his admonition to Mayle that he cease making such requests of Cobb to be violative of the Act. He pointed out to Mayle that if he wanted to see records, he should ask Fred Boffman or Churchill, which is apparently the correct procedure for seeking access to the records. I will recommend that this complaint allegation be dismissed.

D. *Did Respondent Violate the Act by Refusing to Allow Mayle to View the Job Referral Lists on July 11, 1991*

Mayle testified that he was at the union hall on July 11, 1991, and asked Business Agent Howard Woods if he could see the referral lists for the week of June 10. Woods has possession of the referral lists. According to Mayle, Woods responded to the request by saying that he did not have that list. He had a referral list for June 25 with him. Mayle then repeated his request, adding that he also wanted to see the referral list for the week of June 17. Woods said he could not see them.

Mayle testified that at a general membership meeting following this incident, Union Secretary/Treasurer George Churchill told the membership that the union books were open and available for inspection at the union hall during the hours the hall was open. Mayle never thereafter asked Churchill to see the books.

Woods acknowledged that Mayle asked to see certain referral lists and he refused to supply them. He explained that if Mayle wanted to know about anything written in the lists he would have verbally given him the information. He explained that he thought Mayle wanted to take the lists from the union hall. However, nothing in the record would support such a belief. In any event, if that was the reason for his re-

[5] The reference to the window bucket evidently relates to some window cleaning Mayle did when he was not employed in construction.

[6] Mayle testified that he spoke with Cobb, the Union's janitor, about seeing the referral books.

[7] Boffman's testimony in this regard is corroborated by Walton, Cobb, and even Mayle.

fusal, he could easily have allowed Mayle to inspect the lists in his office and only refused their removal from the premises. Instead, he flatly refused to let Mayle see the lists.

Cindy Boffman, wife of Walter Boffman and a union employee, overheard the exchange between Mayle and Woods. She testified that she heard Woods refuse to give the list to Mayle and Wood's offer to answer any questions Mayle might have about the lists.

I believe it is clear that Woods' refusal to let Mayle see the referral lists requested violated the Act. The refusal was an arbitrary refusal to comply with an employee's reasonable and manageable request for job referral information affecting his employment. Mayle was not obligated to rely on Woods' statement about what was in the lists, he had a right to see them. I believe that Respondent recognized that Woods had acted improperly as Secretary/Treasurer Churchill's statement that the Union's records were open for inspection at a subsequent membership meeting appears to me to be a response to Woods' actions. I therefore find that Respondent violated Section 8(b)(1)(A) of the Act by not allowing Mayle to view the requested referral lists on July 11, 1991. *Electrical Workers IBEW Local 575 (Coleman Electric Co.)*, 270 NLRB 66, 70 (1984).

E. *Did Respondent Unlawfully Threaten an Employee with a Lawsuit in Response to His Signing an Unfair Labor Practice Charge Against the Union*

James Brown, a member of the Union off and on since 1969, testified that he signed an unfair labor practice charge prepared by Mayle and filed on July 1, 1991, in Case 9–CB–7954. He further testified that when he signed the charge it was blank. It is clear from Brown's testimony that he signed the charge without having any idea whatsoever about what it was about. At most, he was just doing a favor for Mayle. After the filing of the charge, he was talking with some other older members in the back of the union hall, when he was summoned into Fred Boffman's office. He met with Fred and Walter Boffman. Fred Boffman asked him if he signed a paper and Brown acknowledged that he had. Fred Boffman then asked if he knew what was on the paper he signed and Brown indicated that it had been blank. Fred Boffman then asked him if he was involved in the suit they (presumably Mayle's dissident group) had against the Union, noting that whoever was so involved was going to be countersued. Fred Boffman then said he did not understand why Mayle was causing so much trouble as the Union had been nice to him.

Both Fred and Walter Boffman gave testimony about this incident. On direct examination neither denied Brown's allegation that he was threatened with a lawsuit for signing the involved charge. On cross-examination, Fred Boffman did deny the threat. I do not accept this denial. I instead credit Brown's version of the conversation. Brown had absolutely no reason to lie about this incident and appeared to me to be an entirely credible witness. On the other hand, Fred Boffman, in his position as business manager of the Union, was being repeatedly targeted by Mayle's group in a series of unfair labor practice charges. His frustration over these filings, which he took personally, was obvious at the hearing.

I find that the threat violates Section 8(b)(1)(A) of the Act. It is obvious to me from the evidence that Fred Boffman was not simply announcing his intention to protect his rights by filing a lawsuit. The threat appeared to be intended to stifle the protected activity of Brown, Mayle, and anyone else connected with Mayle who had the temerity to file an unfair labor practice charge against the Union. *Operating Engineers Local 450 (AGC of Houston)*, 267 NLRB 775 (1983).

F. *Did Respondent Violate the Act By Violating Its Hiring Hall Rules on or about August 16, 1990, by Making Referrals to the Detriment of Matheny and Other Employee Applicants Who Were Ahead of Those Referred by the Union*

On August 16, 1990, Mayle was at the hiring hall at about 7 a.m. and was referred to a job for Rudolph, which lasted until Thanksgiving of that year. He testified that his name was not called for this job, but rather, he was called into Woods' office and given the job referral by Woods and Union Business Agent Sam McClain. Woods was also looking for another employee to send to this job and asked Mayle if he knew where employee Greg Porter could be reached as he was not in the hall. Mayle told them that Porter was engaged in putting a roof on his mother's home in Dayton. At about this time, employee Junior Phillips walked into the hall and McClain announced that Phillips would be sent to the job. Phillips was called into the office and given a referral slip to the Rudolph job. Mayle testified that Matheny was in the hiring hall at the time of these referrals as were a number of other unidentified employees. Phillips could not recall whether Matheny was there or not and could not recall whether his name was called from the referral list in reference to this job.

Matheny testified that he was at the hall at the time of these job referrals and did not hear any names called that day. He verified that Mayle was summoned into Woods' office and from his observation believed Woods was giving Mayle a referral slip. He also testified that Junior Phillips came into the hall and was motioned into Woods' office. When Mayle and Phillips came out of Wood's office, Matheny asked Mayle where he was going to work and Mayle told him.

On the referral list utilized on this date, Mayle was number 14, Matheny was number 19, and Junior Phillips was number 182. The evidence reflects that Phillips was not requested by name by the employer Rudolph nor were any special skills involved in the jobs which Mayle and Phillips were asked to do for Rudolph. Woods denied that Matheny was in the hiring hall on the date in question; however, it is clear from his testimony that he was remembering a job given to Mayle in August 1991, not 1990. Therefore, his denial is virtually meaningless. Woods did not deny any of the specific testimony given by Mayle with respect to this job referral.

I find that Respondent clearly violated its hiring hall rules with respect to the referral of Phillips on August 16, 1990, to the detriment of Matheny and by so doing violated Section 8(b)(1)(A) and (2) of the Act.

G. *Did Respondent Unlawfully Fail to Comply with Its Rules Governing Referrals on a Number of Occasions From December 11, 1990, through June 26, 1991*

Aside from the referrals of Mayle and Phillips described above, the remaining complaint allegations deal with alleged unlawful variances from established rules governing referrals

over an approximate 7-month period. To these allegations, Respondent offers a number of defenses that are similar and therefore these allegations will be discussed together. The evidence presented by the General Counsel would indicate, though not necessarily prove, that Respondent favors some members, including officers of the Union and their relatives, in the referral process. One of the problems with the proof in this case, and in any case brought against this Local on the question of referrals, is the lack of consistent record keeping. Some referrals are evidenced by work orders and others are not. There is no procedure by which a job applicant can easily prove that he was at the hall on a given date or at a given time. This lack of procedural safeguards gives the opportunity to the leadership of the Union to exhibit favoritism without real fear that such favoritism can be proven.

The Union also does not follow its contract in certain instances. For example, it does not adhere to the contractual limit of 1-year recall rights. Fred Boffman testified that the Union will comply with a contractor's request for a named employee in almost any circumstance. However, this practice is not consistently adhered to. On one major job discussed in the record, the G.F.C. job, it was shown that the employer's foreman requested several employees by name, but Respondent refused to dispatch these employees. Although this practice is relied on by Respondent for some referrals, it does not affect my ruling on the various complaint allegations dealing with referrals. Its inconsistent application does, however, support the General Counsel's assertion that the operation of the hiring hall is not always in accordance with established procedures. Further, as it was not shown to be a consistently followed past practice, I find that it is a separate violation of Section 8(b)(1)(A) of the Act.

Respondent also follows the practice of naming stewards to jobs apart from the ordinary referral process, though the contract requires that a steward be named from the ranks of employees referred to the job pursuant to the normal referral procedures. It does appear to have consistently adhered to this practice.

The Union also reserves the right to subjectively assess the skills of job applicants to meet skill requests of employers. I say subjectively because though the Union has required job applicants for some time to fill out an application which lists their skills, these application forms are not regularly updated to reflect added experience or skills. Nor is the fact that the applications may play a part in the referral process noticed anywhere in the hiring hall, as are most of the other rules regarding referrals. The referral lists do not reflect the skills of the various applicants listed thereon. They are simply divided into group A through D, dictated by experience. There was no clear showing by specific example of referrals being made on the basis of skill, though Fred Boffman indicated they were. Woods testified that he, at least on occasion, will announce special skills required in a job when announcing the job before calling names. In response to such an announcement, he testified that some applicants come to his window, say they possess the required skill, and are given the referral. He evidently dispenses with the calling of the out-of-work list in such a circumstance. I cannot find that any job actually involved in this case required a skill that either Matheny or Mayle did not possess.

I do not believe the evidence reflects widespread or pervasive abuse of the referral process. It does clearly establish certain violations of that process and strongly hints at others.[8] In the remedy section of this decision, I will recommend certain procedures be instituted to help deter abuse and make any abuse detectable. With this foreword, I will discuss the specific instances in which the Respondent is alleged to have violated the Act.

1. The December 11, 1990 referral of Walton and Berry

The consolidated complaint alleges that Respondent referred men to a job with Field at about 10:30 a.m, after the hall had closed at 10 a.m. Certainly, the facts would reflect that Respondent referred Arthur Berry and Earnest Walton to Field after the hall closed in response to what Respondent calls an emergency situation. Mayle testified about this incident, and I find his testimony somewhat less than credible. He testified that he was present at the union hall on December 11, 1990, from approximately 7:30 a.m. for about 1 to 1-1/2 hours. There were approximately 30 to 35 people in the hall that day. No names were called aloud while Mayle was at the hall.[9] That day Mayle observed Earnest Walton in Woods' office through the glass which connects the hiring hall room and Woods' office. He saw Walton go to the glass and motion for Arthur Berry to come into the office area.

[8] Fred Boffman testified that he looked after his family members. Ken Boffman, Walter Boffman's son, was fired as steward from Ro-Dan in May 1991 and then was referred for a physical with Teco Glass in early June 1991. Respondent's auditor, Arrington, was consistently referred to employment by Respondent. Thus, he was employed from January through at least August 1990 by Detzel Construction for a significant number of hours each month, was referred for employment with Rudolph in at least September and November 1990, was employed by Harris Masonry Company Construction for a significant number of hours each month from November 1990 through March 1991, was referred to employment with Smoot for a period of time in May 1991, was referred to and employed by Teco Glass in June 1991, and was referred to employment with Petroykorski Construction in June 1991. Thus, it is clear that Arrington was employed almost consistently from at least January 1990 through June 1991, and had previously been employed for almost a year by Smoot from September 1988 through August 1989, when he was terminated for unreported absences. A review of the evidence also discloses that Marvin Barrett, Robert Bush, Eli Madison, John Berry, and Charles Wiegand were all referred to employment frequently during periods of time when Mayle was unemployed, and along with numerous other referral applicants, was available for referral and was usually in a position on the out-of-work or referral list more favorable than these other workers.

[9] Virtually every witness testified that Woods' regularly called names from the out-of-work list on days when there are jobs available. He normally called these names between the time the hall opens at and 7 a.m., depending upon how distant the job is from the union hall. Because Mayle rarely went to the hall before 8 a.m., his testimony that he did not hear names called does not establish the fact that names were or were not called on a particular day. He simply was not at the hall at the time the names would normally be called. Similarly, because he was not at the hall at this time, the fact that someone below him on the out-of-work list was referred to a job on a given date does not prove that Mayle's name was not called and he simply was not in the hall to respond. Although I allowed Mayle to give a substantial amount of hearsay evidence relating to what unidentified persons told him had happened at the hall at times when he was not present, I will not rely on this evidence alone to find a violation.

Berry went to the window and then into the office. Mayle saw nothing further of Berry or Walton that day.

Walton and Berry were employed by Field and Associates, Inc. on December 11, 1990, at the Bureau of Worker Compensation Building in Columbus, Ohio, for 2 days. They worked 4 hours on December 11 and 8 hours on December 12. Walton and Berry were employed pursuant to an emergency request by the project manager of the Union for minority employees. This is the only time that Walton and Berry had worked for Field and Associates from January 1, 1989, to the present. Mayle, Walton, and Berry are all black. Respondent does not have a referral book covering the period including December 11, 1990. That book is missing.

With regard to this incident, Mayle agreed with Respondent's counsel that if the Union had not filled the employer's emergency request, the employer, whether authorized by the contract or not, would have hired two employees off the street. He also agreed that the procedure to be followed in this circumstance would be to fill the request with the two minority applicants present at the hiring hall who had the lowest numbers on the referral list. This list was not available and thus, it cannot be said with certainty that Mayle had a lower number than either Walton or Berry. The General Counsel points to the fact that Walton had worked more recently than Mayle, so one could assume that Mayle would have a lower number than Mayle. However, this assumes that Mayle had not refused a regular job in the interim and thus lost his place on the list. It would also assume that Walton's employment was for more than 7 days because if it was for less he would not lose his position on the referral list. The record is silent on these points. Moreover, all the arguments advanced by counsel on brief assume Mayle was in the hall and in a position to accept a job referral. Everyone who testified about the incident, except Mayle, indicated that the referrals were made after the hall closed and not at a time when Mayle was at the hall. How Mayle found out that Walton and Berry were referred on December 11, 1990, to the Field job, I do not know. I do not, however, believe it was as he testified. I do credit Fred and Walter Boffman's version of what happened and do not believe their response to an emergency call for laborers after the hall closed violates the Act. There are no written provisions covering emergency situations because, as Woods testified, they are by their nature very different for ordinary referals and different from one another. Under these circumstances, I do not find a violation of the Act.

2. The January 1991 referrals to G.F.C.

Between January 17 and 28, 1991, employees Danny VanCouren, Claude Dickerson, Hal Failrey, Tony Young, Eli Madison, Marvin Barrett, and Charles Wiegand were referred by the Union to employment with G.F.C. Marvin Barrett was employed by G.F.C. for approximately 389.5 hours from payroll period ending February 5 through payroll period ending April 23, 1991. John Berry was employed by G.F.C. for 249 hours during the payroll period ending March 5, 1991. Robert Bush was employed by G.F.C. for 417.5 hours from payroll period ending February 12 through payroll period ending April 28, 1991. Claude Dickerson was employed by G.F.C. for 368 hours during the period from payroll period ending February 5 through payroll period ending March 29, 1991. Eli Madison was employed by G.F.C. for 304 hours during the period from payroll period ending February 5 through March 28, 1991. Raymond L. Price was employed by G.F.C. for 346 hours during the period from payroll period ending February 26 through payroll period ending April 9, 1991. Danny VanCouren was employed by G.F.C. for 375 hours during the period from payroll period ending January 29 through April 5, 1991. Charles A. Wiegand was employed by G.F.C. for 360 hours during the period form payroll period ending February through April 5, 1991. Anthony Young was employed by G.F.C. for 303 hours during the period from payroll period ending February 5 through March 29, 1991. These are the only times that these individuals were employed with G.F.C. from January 1, 1989, to the present.

On the out-of-work or referral list in effect from January 14–28, 1991 (with an automatic checkoff for January 31, 1991), James Brown was number 30, Claude Dickerson—52, Eli Madison—54, James Matheny and Charles Schaeffer—77, Hal Fairley—106, Michael Mayle—128, Marvin Barrett—132, and Raymond Price—226. This list did not contain the names of Charles Wiegand or Robert Bush. On the out-of-work list dated January 28 to February 4, 1991, Claude Dickerson was number 6, Eli Madison—8, James Matheny—28, Hal Fairley—49, Michael Mayle—68, Marvin Barrett—72, and Raymond Price—152. The names of Charles Wiegand and Robert Bush do not appear on this list. On the out-of-work list dated from February 11–18, 1991, Michael Mayle was number 69, and Raymond Price was 146.

The General Counsel contends that the referrals of Weigand and Barrett were improper because Barrett had a higher number than Mayle and Wiegand was not on the list.[10] He asserts on brief that Mayle was at the hiring hall on the date or dates these men were referred to work for G.F.C. I cannot find evidence showing that Mayle was at the hall when these men were referred or if he were there, evidence to establish that he was at the hall when names were called to fill the job openings.[11] He did not testify that he was at the hall when the referrals were actually made and had no independent knowledge that they were not made in accordance with the hiring hall rules. Though Wiegand was not on the list, there is no showing that he was not the only person in the hall available to take the job when it was available. Again, because the hiring hall rules require the physical presence of applicants when the referral list is called, I cannot find that the mere fact that Mayle was not referred to a job on a given date when other applicants lower on the referral list than he were so referred, establishes a deviation from the hiring hall rules or a violation of the Act. Mayle's failure to go to the hall at times when jobs were normally called severely hurts his case in this regard. I will recommend that this complaint allegation be dismissed.

3. The referral of Robert Bush to the G.F.C. project

Robert Bush was employed and served as steward on the RCA job in Circleville, Ohio, with Rudolph and when that job was completed, he was sent directly to work with G.F.C.

[10] It would appear that the referral of Raymond Price would also fall into this category.

[11] Mayle did not maintain records of his attendance at the hall. He testified that during December 1990 and January and February 1991 he went to the hall almost every day. However, his attendance at the hall was usually after 8 a.m.

G.F.C. needed employees at the time so Bush was referred to G.F.C. Fred Boffman testified that the employer called the hall stating that it had run short of help, so he just dispatched Bush to the job.[12] There is no showing that any emergency existed or special skill required that was possessed by only Bush that would justify bypassing the normal referral process to fill the employer's need. Woods testified that he referred Bush to the G.F.C. job as steward by calling the out-of-work list. Fred Boffman first testified that Bush was not a steward on this job, then equivocated. Given the variance between the two union officials testimony, and the lack of any written document to indicate that Bush was a steward on this job, I do not credit this portion of their testimony. I do credit Fred Boffman's description of how Bush was referred and find it to be totally at odds with established referral procedures. Therefore, I find that the Respondent violated its referral procedures in this instance and the Act as well.

4. The February 14, 1991 referral of Cleveland Cunningham to the Limited project

On February 14, 1991, Mayle was at Respondent's referral hall for approximately 1 hour beginning at around 8 a.m. Approximately 50 to 60 people were at the hall at that time. While Mayle was at the hall that day no names were called out loud. Cleveland Cunningham was employed by Smoot from February 15–22, 1991, at the Limited warehouse job in Columbus, Ohio. Cunningham was not requested by name for the Limited job and the Company had no right to request him by name inasmuch as he had not worked for the Company prior to that time. Cunningham worked as a general laborer and did not serve as a steward or foreman on the Limited job.

On the out-of-work list dated February 11–18, 1991, Mayle was number 69. Tom Cunningham's name appears as the last name on the list at 297. The General Counsel contends this is a violation of the Respondent's referral rules. However, as Mayle was not shown to be at the hall when names were normally called for jobs on this date, I cannot be certain that Mayle's name was not called and that Cunningham was not properly referred. Cunningham was not called as a witness. In the circumstances, I cannot find that it has been proven that Respondent violated its hiring hall rules in this instance.

5. The May 1991 referral of Willie Arrington to the Limited project

Respondent's auditor, Willie Arrington, was employed by Smoot from May 7–21, 1991, at the Limited distribution center in Columbus, Ohio. Arrington was not requested by name in May 1991 for employment at the Limited warehouse inasmuch as Arrington had been terminated from his previous employment with Smoot in August 1989 for three absences without calling in. He served neither as steward nor foreman on the Limited job.

On the out-of-work list dated May 6–13, 1991, Mayle was number 20 and Arrington was number 145. There is no showing with respect to what time Mayle arrived at the hall on May 6, when the referral was made. The only evidence on this point is his general testimony that he normally came to the hall around 8 a.m. or later. Mayle testified that he did not see Arrington at the hall on May 6, which would be consistent with Arrington having been referred to a job an hour or so earlier when names for referral were normally called. Arrington was not called as a witness. In the circumstances, I do not find that it has been proven that Respondent violated its hiring hall rules by referring Arrington ahead of Mayle on May 6, 1991.

6. The appointment of Robert Bush to Ro-Dan as steward

Robert Bush was employed by Ro-Dan from May 29 though August 28, 1991, at a job at the Anheuser Busch plant in Columbus, Ohio. While Ro-Dan Owner and Project Manager Cleophus Roberson Jr. had known Bush as a pipefitter working in the field for some 15 years and from employment on other jobs, Bush had never worked for Ro-Dan prior to May 1991. Bush served as steward (replacing Ken Boffman) on the Anheuser Busch job. At the time of Bush's hire by Ro-Dan, there were other laborers on the Anheuser Busch job. Bush was also requested by the employer by name.

On the out-of-work list dated May 20 through June 13, 1991, Mayle was number 12 and Robert Bush was number 201.

This is an instance in which Respondent's practice of appointing stewards apart from the referral procedure comes into play. The General Counsel notes that the Board allows the appointment of stewards in this fashion where the contract between the union and employer calls for this method of selecting stewards. Therefore, the Board has found that there is nothing inherently discriminatory about this practice. The Board has heretofore, in its earlier decision involving this Union, approved a deviation from the contract provisions based on past practice. This deviation involves the Union's rule that accepting a 7-day job causes an employee to lose his position on the out-of-work list rather than a 3-day job, as specified in the contract. I believe the Union's established practice of appointing stewards should be similarly allowed. The practice is obviously acceptable to involved employers and though known to the Union's membership, has not been the subject of any widespread membership complaint. For these reasons, I will not find that Respondent violated the Act in its appointment of Bush as steward on the Ro-Dan job.

7. The June 1991 referrals to Teco Glass

In June 1991, more than 60 employees were referred to take physical examinations a prehiring condition for employment with Teco Glass. Those who passed the physicals were to be employed by that company on a furnace job. Referral applicants who were not referred to take the physical were unable to be employed by Teco Glass, inasmuch as that was a condition of employment.

On June 3, 1991, James K. Brown went to the union hall at approximately 8 a.m. in order to renew his position on the out-of-work list. At the referral hall window, Fred Boffman asked him if he wanted to go to work at Teco Glass. He did and was referred for a physical and evidently passed. Brown was employed at Teco Glass for approximately 3 days at

[12] This referral evidently took place around the first week of February 1991

which time he had a heart attack and thereafter was unable to continue his employment with that company.

Mayle reported to the union hall on June 3, 1991, at approximately 8 or 8:30 a.m. in order to check off or renew his name on the work list. There were quite a few people present at the hall that day. No union agent asked Mayle about employment with any company that day and nothing was said to him about employment or taking a physical for employment with Teco Glass. Mayle was at the union hall every day during the week of June 3, 1991, and nothing was ever said to him about Teco Glass or possible employment with that company.

Numerous employees were referred to work with Teco Glass who had been referred to other jobs more recently than Mayle. Arrington was referred to work at Teco Glass and had been referred to employment at numerous companies, including, but not limited to Rudolph, Smoot, and Detzel Construction. Danny VanCouren was employed at Teco Glass and, among other places, had been referred to employment with G.F.C. in February 1991. John Berry was referred to Teco Glass for employment and had worked for numerous employers in the past 2 years, including, but not limited to, G.F.C. and Chet Baker and Company. Walter Boffman's son Ken Boffman was referred to Teco Glass, notwithstanding having been employed, among other places, at Ro-Dan as recently as May 1991. Marvin Barrett was referred to employment with Teco Glass and had been referred to employment with numerous employers, including, but not limited to, Rudolph and G.F.C. Eli Madison was referred to employment with Teco Glass and had recently been employed by Ro-Dan and G.F.C. Robert Bush was employed by Teco Glass and had previously been employed by numerous employers, including, but not limited to, Rudolph, G.F.C., and Ro-Dan.

On the out-of-work list dated June 3–17, 1991, Mayle was position number 9, James Brown—43, Eramus Ragland—62, Bill Arrington—107, Ken Boffman—247, Claude Dickerson—253, and John Berry—274. Robert Bush's name did not appear on this list. All but Mayle were referred to employment with Teco Glass.

In this instance, I find that Respondent did violate its referral rules and the Act by not referring Mayle to take a physical for potential employment with Teco Glass. He was certainly at the union hall on June 3, as he was checked off and his name appears on the referral list for that week. He was there at the same time as Brown who was referred though his position on the referral list was higher than that of Mayle. There was no credible showing that Mayle was physically unqualified or lacked the necessary training or experience to work on the Teco Glass job. Thus, there appears to be no legitimate reason for bypassing Mayle.

8. The June 1991 referral of John Berry to Cleveland Cement

John Berry was employed by Cleveland Cement from June 26 through July 18, 1991, and from July 25 through September 17, 1989. During the pay period ending July 2, 1991, Berry was employed 45.5 hours, during the pay period ending July 9, 1991—26.5 hours, during the pay period ending July 16, 1991—46 hours, and during the pay period ending July 23, 1991—16 hours.

On the out-of-work list dated June 25, 1991 through July 1, 1991, Mayle was number 4, Eramus Ragland—46, Bill Arrington—82, Hal Fairley—101, Tome Cunningham—126, Marvin Barrett—136, Ken Boffman—196, Claude Boffman—198, Claude Dickerson—200, and John Berry—212. There is no copy of a work order referring John Berry to Cleveland Cement in the book dated June 26, 1991, or the book immediately covering the period before that.

Again, though it would appear that Berry was referred to this job out of turn, there is no proof that this is so. There is no evidence regarding what happened at the hall on the day he was referred or whether Mayle or any other person having a lower position on the referral list was physically present to accept the involved referral. In the circumstances, I do not find a violation of the Act.

9. Conclusions with regard to the referral process

Referrals made pursuant to an exclusive hiring or referral hall arrangement must be based on objective criteria applied in a nondiscriminatory manner. *Iron Workers Local 505 (Snelson-Anvil)*, 275 NLRB 1113 (1985); *Plumbers Local 619 (Bechtel Corp.)*, 268 NLRB 766 (1984); *Operating Engineers Local 406 (Ford, Bacon & Davis Construction)*, 262 NLRB 50 (1982); and *Plumbers Local 392 (Kaiser Engineers)*, 252 NLRB 417 (1980). Here, while Respondent has established objective criteria by which it purports to operate its exclusive hiring hall, it has failed to follow those procedures consistently in making referrals. The record evidence establishes that Respondent will refer individuals specifically requested by name by a contractor even though that person has never worked for the contractor before or has worked for that contractor more than the 1-year recall period provided for in the contract. Respondent relies on and makes it own assessment of whether the referral applicants on the list have specific job skills or experience which might be called for in a job even though the hiring hall rules do not provide for any reference to such job skills or experience and Respondent does not, in any regular or orderly fashion, maintain records relating to referral applicant's abilities in this regard or obtain any kind of updated or current status with regard to such job skills, qualifications, or experience which referral applicants may have. Respondent makes referrals, at least on occasion, without calling out the names from the referral list in accordance with its established procedures.[13] The General Counsel has established that Respondent has violated Section 8(b)(1)(A) and (2) of the Act by failing to comply with its own established procedures with regard to the operation of the hiring hall.

CONCLUSIONS OF LAW

1. Dugan & Meyers Interest, Inc., G.F.C. Inc., the Sherman R. Smoot Company, Field and Associates, Inc., Sasco Brick Contractors, Inc., Teco Glass, Inc., Cleveland Cement

[13] As noted earlier, Respondent also makes referrals in emergency situations without any established procedure. Emergency referrals, based on this record, are fairly rare and by their very nature do not appear to be subject to any rigid set of referral rules. Respondent has not been shown to have discriminated against any applicant or group of applicants in its referrals in emergency situations and I do not find that it has violated the Act in its handling of such situations.

For reasons set forth earlier in this decision, I do not find Respondent's practice with respect to appointing stewards to violate the Act.

Contractors, Inc., Ro-Dan Mechanical Services, Inc., and Rudolph/Libbe, Inc. are all employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Respondent is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent has violated Section 8(b)(1)(A) of the Act by:

(a) Refusing to comply with an employee's request to view Respondent's job referral records.

(b) Threatening an employee with a lawsuit for signing an unfair labor practice charge filed against Respondent.

4. Respondent has violated Section 8(b)(1)(A) and (2) of the Act, by:

(a) Making referrals to Rudolph/Libbe, Inc. on August 16, 1990, in violation of its established and posted referral rules and procedures.

(b) Referring employee Robert Bush to employment with G.F.C. Inc. in February 1991, in violation of its established and posted referral rules and procedures.

(c) Referring employees to employment with Teco Glass, Inc., in June 1991, in violation of its established and posted referral rules and procedures.

5. The above-unfair labor practices affect commerce within the meaning of Section 2(6) of the Act.

6. The Respondent did not engage in the other unfair labor practices alleged in the consolidated complaint.

REMEDY

Having found that Respondent has engaged in conduct in violation of Section 8(b)(1)(A) and (2) of the Act, I will recommend that it cease and desist from such conduct and take certain affirmative action to effectuate the policies of the Act.

To remedy Respondent's unlawful violation of its established and posted referral rules and procedures, it is recommended that Respondent be ordered to make whole Michael Mayle and James Matheny for any loss of earnings they may have suffered by reason of Respondent's unlawful conduct. Backpay shall be computed in the manner set forth in *F. W. Woolworth Co*., 90 NLRB 289 (1950), with interest thereon computed in accordance with *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

There may be other applicants who were likewise injured by Respondent's unlawful deviation from its established referral rules, though proving their existence is unlikely because of the lack of adequate recordkeeping by Respondent. Thus, I would additionally recommend that Respondent be ordered to establish a written attendance procedure for its hiring hall which would record the date and hour of the physical presence of job applicants. Similarly, I would recommend Respondent be ordered to record, perhaps on its referral lists, the names of those applicants who refuse employment on a given date. Lastly, I would recommend that Respondent be ordered to post notice to its members and applicants that it relies on their application forms in making referrals and establish a procedure whereby applicants can regularly update their application forms.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[14]

ORDER

The Respondent, Laborers' International Union of North America, Local Union No. 423, AFL–CIO, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Refusing to comply with an employee's request to view Respondent's job referral records.

(b) Threatening an employee with a lawsuit for signing an unfair labor practice charge filed against Respondent.

(c) Operating its hiring hall by making referrals for employment that deviate from and violate its established and posted referral rules and procedures.

(d) Failing and refusing to refer Michael Mayle to employment with Teco Glass, Inc. and G.F.C. Inc. or any other employer, and failing and refusing to refer James E. Matheny to employment with Rudolph/Libbe, Inc., or any other employer, pursuant to the operation of an exclusive hiring or referral hall in a manner that deviates from and violates its established and posted referral rules and procedures.

(e) In any like or related manner restraining or coercing applicants for referral in the exercise of rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Operate its hiring hall in the manner described in the established and posted rules and in accordance with objective criteria.

(b) Make whole Michael Mayle and James E. Matheny for any losses they may have suffered by virtue of Respondent's unlawful deviation from and violation of its established and posted referral rules, in the manner described in the remedy section of this decision.

(c) Establish a written attendance procedure for its hiring hall which would record the date and hour of the physical presence of job applicants, and record the names of those applicants who refuse employment on a given date.

(d) Post notices to its members and applicants that it relies on their application forms in making referrals and establish a procedure whereby applicants can regularly update their application forms.

(e) Preserve and, on request, make available to the Board or its agents for examination and copying, all referral records and other records necessary to analyze the amount of backpay due under the terms of this Order.

(f) Post at its business office and meeting places in Columbus, Ohio, copies of the attached notice marked ''Appendix.''[15] Copies of this notice, on forms provided by the Regional Director for Region 9, after being signed by Respondent's authorized representative, shall be posted by Respondent at its business office and meeting places immediately upon receipt and be maintained by it for 60 consecutive days in conspicuous places, including all places where notices to members and applicants are customarily posted. Reasonable

[14] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[15] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

steps shall be taken to ensure that the notices are not altered, defaced, or covered by any other material.

(g) Notify the Regional Director in writing within 20 days of the date of this Order what steps Respondent has taken to comply.